the case is supportable, for if full title to the outer walls remained in the landlord he clearly could, on the authority of *Fuller v. Rose,* license the erection of signs not directly injurious to the plaintiff.

LIBEL AND SLANDER—MISTAKE IN THE NAME OF PERSON—LIBEL WITHOUT INTENT.—In an action on the case for libel it was alleged and proved that the plaintiff, R. Laudati, was called an embezzler and charged with misappropriating certain funds, in a circular prepared and published by the defendant and certain members of an Italian organization of which the defendant was the presiding officer. The facts show that the plaintiff's uncle, N. Laudati, who was an officer in the Italian organization, was meant. *Held,* that liability depends on whether the accusation applies to plaintiff and not whether so intended. *Laudati v. Stea* (R. I., 1922), 117 Atl. 422.

The tendency of modern courts in this country is to disregard intent as an element of libel. *Farley v. Evening Chronicle Pub. Co.,* 113 Mo. App. 216; *Whiting v. Carpenter* (Neb., 1903), 93 N. W. 926; *Sisler v. Mistrot* (Tex., 1917), 192 S. W. 565. Carelessly to utter defamatory statements entails the same responsibility for the injurious consequences as negligently to shoot off a gun. Hence, it is no defense to an action of libel that the defendant did not intend to injure the plaintiff: *Curtis v. Mussey,* 6 Gray (Mass.) 261; *Nash v. Fisher,* 24 Wyo. 535; *Haire v. Wilson,* 9 B. & C. 643; for every person is presumed to have intended the natural and probable consequences of his own acts. *Morris v. Sailer* (Mo., 1911), 134 S. W. 98; *Hamlin v. Fantl,* 118 Wis. 594. A person is liable for slander spoken in jest. *Hatch v. Potter,* 2 Gilman (Ill.) 725. So it has been held that a defendant is liable for a libelous publication intended to refer to a fictitious person, but reasonably believed by third persons to refer to the plaintiff. *Jones v. Hulton & Co.,* L. R. [1909] 2 K. B. 444; *Corrigan v. Bobbs-Merrill Co.* (N. Y., 1920), 126 N. E. 260. In *Peck v. Tribune,* 214 U. S. 185, the court says: "If the publication was libelous the defendant took the risk. * * * The law looks to the tendency and the consequences of the publication, not at the intention of the publisher." ODGERS ON LIBEL AND SLANDER, Ed. 5, 341. Some courts, however, still cling to the old idea that intent is the gist of the action of libel. So, in *Hanson v. Globe Newspaper Co.,* 159 Mass. 293, a case similar on its facts to the principal case, in considering the question of intent, the court said that extrinsic evidence was admissible to show to whom the defendant intended to apply his remarks. But this case is overwhelmed by contrary authorities of other jurisdictions. *Taylor v. Hearst,* 107 Cal. 262; *Hulbert v. New Nonpareil Co.,* 111 Ia. 490; *Peck v. Tribune, supra; Every Evening Printing Co. v. Butler,* 144 Fed. 916; *Davis v. Marxhausen,* 86 Mich. 281, second appeal, 103 Mich. 315. It is to be noted that in *Sweet v. Post Pub. Co.,* 215 Mass. 450, a case similar on its facts to *Hanson v. Globe Newspaper Co., supra,* the court took the view of the court in the principal case and held that a newspaper cannot escape liability for libel because it was honestly mistaken in the name of the person. The Massachusetts court attempted to distinguish the two cases on the ground that in *Hanson v. Globe Newspaper Co., supra,* the language

itself, in connection with the publicly known circumstances under which it was written, shows at once that the article referred to someone else than the person named, while in *Sweet v. Post Pub. Co., supra,* it was in effect conceded at the trial that the plaintiff was the person meant, although the naming of him was due to a mistake. See 47 L. R. A. (N. S.) 240, Ann. Cas. 1914 D, 533.

MASTER AND SERVANT—LIABILITY OF MASTER FOR NEGLIGENCE OF BORROWED SERVANT.—A sub-contracting company, which was under agreement to excavate for construction work, contracted with a trucking company to furnish necessary motor trucks. The trucking company hired several additional trucks with drivers from a truck renting corporation. One of these trucks so hired, in the course of work, ran over plaintiff's intestate, a pedestrian. The action was originally brought against all three companies as defendants, but was dismissed as to the truck renting corporation, so that the only question which presented itself on appeal was the location of the burden of liability as between the sub-contractors and the trucking company. *Held,* driver of the truck was not at the time a servant of the sub-contractor nor of the truck renting corporation, but immediately employed by the trucking company, which was liable for the accident. *Wagner v. Motor Truck Renting Corporation et al.* (N. Y.), 136 N. E. 229.

In the instant case the negligence of the driver was admitted and no claim was made that deceased was guilty of contributory negligence. The case turned entirely upon the question, by whom was the driver employed at the time his negligence caused the death. It is a general legal principle, often affirmed, that one is not accountable to third persons for injuries caused by negligence of a servant in performance of an undertaking, unless the relation of master and servant existed between the wrongdoer and the one to be held liable. *Patton v. McDonald,* 204 Pa. 517; *Beard v. Omnibus Co.* [1900], 2 Q. B. 530. The class into which the principal case appears to fall includes those situations where the general master may lend his servant to another so that the latter becomes responsible for the servant's negligence. *Brown v. Smith & Kelly,* 86 Ga. 274; *Cunningham v. Improvement Co.,* 20 N. Y. App. Div. 171. Conversely, the general master may remain responsible for the unlawful acts of his servant in some cases where a second and special employment is involved. *Quarman v. Burnett,* 6 M. & W. 499; *Joslin v. Ice Co.,* 50 Mich. 516; *Lewis v. L. I. Ry. Co.,* 162 N. Y. 52. The fact of a master's liability under the principles indicated in the enumerated cases is uncontested. The difficulty for the courts has come in the application of that liability to the facts of a stated case. Out of considerable confusion at least one clear test, that of power of control, has been evolved. *Standard Oil Co. v. Anderson,* 212 U. S. 215; *Ash v. Lumber Co.,* 153 Iowa 523. Other cases have been referred to as formulating further tests, that of power to discharge, *Construction Co. v. Hansen,* 176 Ill. 100, and in whose business servant was engaged. *Kimball v. Cushman,* 103 Mass. 194; *D., L. & W. Ry. v. Hardy,* 59 N. J. L. 35; *Parkhurst v. Swift,* 31 Ind. App. 521. In reality, however, such decisions make these